

**Lewis, Jen**

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**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Friday, March 06, 2015 8:25 PM  
**To:** Kermish, Laurie  
**Subject:** Voice from the past  
**Attachments:** order granting pge sj on rcra claim.pdf

Hi Laurie,

I hope things are well! I haven't spoken with you in a while, I hope the Region is holding together well (and won't be shut down again come next fiscal year). I just found out that Alan Morrissey retired-- the end of an era! As time marches on, fewer of my compatriots are still at their posts! Well, I hope the agency is finding youngsters to fill their shoes who can start building new institutional memory.

I wanted to let you know about a recent adverse ruling in the Northern District regarding the interplay between RCRA and the CWA. I'm sending you a copy of the decision. I would like to chat with you about it if I could. I will give you a call next week. if you have any suggestions about who else in EPA I might talk to (current RCRA guru?), I'm all ears. In the past, I would've called Michael Hingerty, but alas...

Thanks,

Chris

--

Christopher Sproul  
Environmental Advocates  
5135 Anza Street  
San Francisco, California 94121  
Phone: (415) 533-3376  
Fax: (415) 358-5695  
E-mail: csproul@enviroadvocates.com

**Lewis, Jen**

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**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Monday, March 09, 2015 1:23 PM  
**To:** Kermish, Laurie; Karr, Harrison; Keener, Bill  
**Subject:** Fwd: Fwd: 15-15424 Ecological Rights Foundation v. PG&E "Civil Case Docketed"

Hi guys,

Here is the Ninth Circuit scheduling order in the case that I mentioned to you in my recent messages. I'll give you a call to discuss, hoping to talk to someone in the Region with knowledge of the RCRA anti-duplication provision about this.

Chris

----- Forwarded Message -----

**Subject:** 15-15424 Ecological Rights Foundation v. PG&E "Civil Case Docketed"

**Date:** Mon, 9 Mar 2015 09:19:40 -0700

**From:** [ca9\\_ecfnoticing@ca9.uscourts.gov](mailto:ca9_ecfnoticing@ca9.uscourts.gov)

**To:** [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

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### United States Court of Appeals for the Ninth Circuit

#### Notice of Docket Activity

The following transaction was entered on 03/09/2015 at 9:19:11 AM PDT and filed on 03/09/2015

**Case Name:** Ecological Rights Foundation v. PG&E

**Case Number:** 15-15424

**Document(s):** Document(s)

#### Docket Text:

DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 03/16/2015. Transcript ordered by 04/06/2015. Transcript due 05/06/2015. Appellant Ecological Rights Foundation opening brief due 06/15/2015. Appellee Pacific Gas & Electric Company answering brief due 07/15/2015. Appellant's optional reply brief is due 14 days after service of the answering brief. [9449234] (SML)

**Notice will be electronically mailed to:**

Fredric Evenson  
Ms. Jodene Isaacs  
Brian Orion  
Mr. Bradley Rochlen  
Mr. Russell B. Selman  
Mr. James Michael Showalter, Attorney  
Mr. Christopher Sproul  
USDC, San Francisco  
Mr. Rocky Unruh  
Mr. William Verick, Attorney  
Ms. Kathy Pope Wyatt, Court Reporter  
Mrs. Lydia Radovich Zinn, Official Court Reporter

The following document(s) are associated with this transaction:

**Document Description:** Mediation Letter

**Original Filename:** Mediation letter.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1106763461 [Date=03/09/2015] [FileNumber=9449234-0]  
[9d1d008bd7f39be907a0b475a97ac2d48312198b40bc3d71f8f01010441993f52a379631afb533560f618e65f1e4  
d098ab30f9de08a39bfb68a814b4c5ee4dfe]]

**Document Description:** Mediation Questionnaire

**Original Filename:** Mediation Questionnaire\_Flat.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1106763461 [Date=03/09/2015] [FileNumber=9449234-1]  
[8dd89e429a0309dcb9776194a28fe0a834a5abe74ed161b985dc211efc7c7114ee48b178d2cbe18b4f8fa5703630  
cda7060a1f99ec59e3a32696b9651fd10860]]

**Document Description:** Case Opening Packet

**Original Filename:** case opening - csl appls1.15.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1106763461 [Date=03/09/2015] [FileNumber=9449234-2]  
[08c795cc474ad36ee79b1806e123b0595a0222bb38f25472567c3b355ee26c4a6878309dd79bd6ecba031d2889d  
388d0461c4ae840768322b098dfbf85967e21]]

**Document Description:** Docketing Letter

**Original Filename:** /opt/ACECF/live/forms/StephanieLee2\_1515424\_9449234\_v2Letter-  
CaseDocketing\_190.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1106763461 [Date=03/09/2015] [FileNumber=9449234-3]  
[622dafecf06cdfcb0df63d93c662a96bea23520b270e39c4e4f66b542c5adb1c805354e5791304ff17db4525b4845  
f5eafb57c30ba168f5544f23a8733906b23]]

**Recipients:**

- Fredric Evenson
- Ms. Jodene Isaacs
- Brian Orion
- Mr. Bradley Rochlen

- Mr. Russell B. Selman
- Mr. James Michael Showalter, Attorney
- Mr. Christopher Sproul
- USDC, San Francisco
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**Lewis, Jen**

---

**From:** David Drelich <daviddrelich@gmail.com>  
**Sent:** Monday, March 23, 2015 1:18 PM  
**To:** Lewis, Jen  
**Subject:** Fwd: Question  
**Attachments:** order granting pge sj on rcra claim.pdf

As promised.

David

----- Forwarded message -----

**From:** Christopher Sproul <envirosproul@gmail.com>  
**Date:** Sun, Mar 8, 2015 at 10:39 PM  
**Subject:** Re: Question  
**To:** David Drelich <daviddrelich@gmail.com>

David,

Thanks very much for the explanation of what happened with these cases. Gratifying indeed when the courts get it right. I'll definitely keep these cases in mind for future briefing. These issues are no doubt going to continue to come up. I will keep you posted as that happens in any of my cases.

I just heard about Alan's retirement. I'm very sad to see him leave the agency, he's been such an asset to all of us who do this work for so long, but he certainly has earned the right to the leisure of retirement.

On another note, I wanted to alert you of an adverse ruling that we recently received in the Northern District. I have attached the ruling. I believe I have mentioned this case to you in the past-- we brought Clean Water Act and RCRA claims against Pacific Gas & Electric Company's corporate maintenance yards where PG&E stores pentachlorophenol treated utility poles. Storm water runoff from these facilities is very high in dioxins and pentachlorophenol. PG&E lacks NPDES permits for these facilities. We alleged that this constituted unpermitted discharge from a point source in violation of CWA section 301. We also alleged that the discharge constituted solid waste disposal that is creating an imminent and substantial endangerment in violation of RCRA. We alleged that the facilities were industrial facilities within the meaning of EPA's storm water regulations on several different theories (e.g., because they should be assigned one of the of applicable SIC codes in those regulations or because the state of California had exercised its discretionary authority to identify facilities like these corporate yards as needing NPDES permits, etc.). The district court ruled against us a few months ago and dismissed our CWA claims, finding that the facilities' storm water discharges are exempt from NPDES permit coverage because they are not industrial discharges. The district court went on to dismiss our RCRA claim in a second ruling. The court found that the RCRA anti-duplication provision blocked our RCRA claim. In what strikes all of us as utterly tortured logic at odds with prior case law, the court found that all point source discharges of stormwater are "regulated" by the CWA as a matter of law, even if the CWA turns around and exempts these discharges from any actual regulation. Thus, the RCRA anti-duplication provision prohibits RCRA regulation of any storm water discharges from a point source, even those that the CWA does not impose any actual regulatory requirements on.

I've alerted some folks in EPA HQ about this ruling--Jen Lewis, Mary Godwin, and Leslie Olf. They followed

an earlier ruling we got in a different case against PG&E, for storm water runoff from the utility poles in PG&E's electrical grid (another case I mentioned to you in the past, I believe). EPA wrote a lengthy memo criticizing that ruling as contrary to EPA interpretation of RCRA (the decision I'm sending you mentions this memo but doesn't dwell on it. I can send it to you if you want/don't have it handy). I would think that this most recent ruling is also contrary to EPA views on RCRA's anti-duplication provision -- which I've always understood as being that there has to be an actual conflict between NPDES permit regulation and RCRA regulation (i.e., a discharge has to be governed by an actual NPDES permit before RCRA regulation is preempted). Are you aware of any EPA guidance on this? Or EPA enforcement actions where EPA either directly or indirectly expressed a pertinent view?

Any thoughts on this much appreciated. I'll give you a call during the week.

Thanks,

Chris

On 3/7/2015 8:24 AM, David Drelich wrote:

Chris,

non-responsive  
[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

David

On Fri, Mar 6, 2015 at 8:14 PM, Christopher Sproul <[envirosproul@gmail.com](mailto:envirosproul@gmail.com)> wrote:  
Hi David,

I can't believe that it has been as many months as it has been since you sent me this message. I have been meaning for some time to respond. I always appreciate hearing from you and having you alert needs to developments in this area of the law! Great decision, right outcome. I wish I had had a hand in it, but alas, I can't claim any credit. I don't know if you will recall, but I was the EPA Region 9 attorney assigned to the EPA and DOH joint Clean Water Act enforcement action against Maui County for sewage spills in the 1990s. We didn't deal directly with the Maui algae and injection well issue, but, of course, sewage is sewage! We got a good consent decree in that case. I also did a little bit of work in the Region on the Maui algae issue, but it was all study at that point. David Henkin, lawyer for the plaintiffs, is a good one.

Do you have a citation to the Fifth Circuit BP ruling that you referred to? I haven't seen that decision and it sounds like a good good one to review.

I have some developments on the RCRA and CWA front to tell you about, maybe ask for your input. I'll send that to you separately later today or over the weekend.

I hope things are well in Washington (and that you are managing not to freeze!).

Chris

On 7/9/2014 7:34 AM, David Drelich wrote:

Chris,

[non-responsive]

--  
Christopher Sproul  
Environmental Advocates  
5135 Anza Street  
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E-mail: csproul@enviroadvocates.com

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**Lewis, Jen**

---

**From:** Drelich, David  
**Sent:** Monday, March 23, 2015 1:15 PM  
**To:** Lewis, Jen  
**Subject:** FW: 15-15424 Ecological Rights Foundation v. PG&E "Civil Case Docketed"

Per request. I will forward one more email (from my gmail account). That's all I have.

David

---

**From:** Christopher Sproul [mailto:envirosproul@gmail.com]  
**Sent:** Monday, March 09, 2015 1:21 PM  
**To:** Drelich, David  
**Subject:** Fwd: 15-15424 Ecological Rights Foundation v. PG&E "Civil Case Docketed"

David,

Here is the Ninth Circuit scheduling order in the case that I mentioned to you in my e-mail yesterday.

Chris

----- Forwarded Message -----

**Subject:** 15-15424 Ecological Rights Foundation v. PG&E "Civil Case Docketed"  
**Date:** Mon, 9 Mar 2015 09:19:40 -0700  
**From:** [ca9\\_ecfnoticing@ca9.uscourts.gov](mailto:ca9_ecfnoticing@ca9.uscourts.gov)  
**To:** [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

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**United States Court of Appeals for the Ninth Circuit**

**Notice of Docket Activity**

The following transaction was entered on 03/09/2015 at 9:19:11 AM PDT and filed on 03/09/2015

**Case Name:** Ecological Rights Foundation v. PG&E  
**Case Number:** 15-15424  
**Document(s):** Document(s)

**Docket Text:**

DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 03/16/2015. Transcript ordered by 04/06/2015. Transcript due 05/06/2015. Appellant Ecological Rights Foundation opening brief due 06/15/2015. Appellee Pacific Gas & Electric Company answering brief due 07/15/2015. Appellant's optional reply brief is due 14 days after service of the answering brief. [9449234] (SML)

**Notice will be electronically mailed to:**

Fredric Evenson  
Ms. Jodene Isaacs  
Brian Orion  
Mr. Bradley Rochlen  
Mr. Russell B. Selman  
Mr. James Michael Showalter, Attorney  
Mr. Christopher Sproul  
USDC, San Francisco  
Mr. Rocky Unruh  
Mr. William Verick, Attorney  
Ms. Kathy Pope Wyatt, Court Reporter  
Mrs. Lydia Radovich Zinn, Official Court Reporter

The following document(s) are associated with this transaction:

**Document Description:** Mediation Letter

**Original Filename:** Mediation letter\*.pdf

**Electronic Document Stamp:**

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**Document Description:** Mediation Questionnaire

**Original Filename:** Mediation Questionnaire\_Flat.pdf

**Electronic Document Stamp:**

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**Document Description:** Case Opening Packet

**Original Filename:** case opening - csl appls1.15.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1106763461 [Date=03/09/2015] [FileNumber=9449234-2]  
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**Document Description:** Docketing Letter

**Original Filename:** /opt/ACECF/live/forms/StephanieLee2\_1515424\_9449234\_v2Letter-CaseDocketing\_190.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1106763461 [Date=03/09/2015] [FileNumber=9449234-3]  
[622dafecf06cdfcb0df63d93c662a96bea23520b270e39c4e4f66b542c5adb1c805354e5791304ff17db4525b4845

**Recipients:**

- Fredric Evenson
- Ms. Jodene Isaacs
- Brian Orion
- Mr. Bradley Rochlen
- Mr. Russell B. Selman
- Mr. James Michael Showalter, Attorney
- Mr. Christopher Sproul
- USDC, San Francisco
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Fax: (415) 358-5695  
E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

**Lewis, Jen**

---

**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Monday, March 09, 2015 1:20 PM  
**To:** Lewis, Jen; Oif, Leslie; Godwin, Mary  
**Subject:** Fwd: 15-15424 Ecological Rights Foundation v. PG&E "Civil Case Docketed"

FYI, here is the Ninth Circuit scheduling order in the ERF v. PG&E case.

Chris

----- Forwarded Message -----

**Subject:** 15-15424 Ecological Rights Foundation v. PG&E "Civil Case Docketed"

**Date:** Mon, 9 Mar 2015 09:19:40 -0700

**From:** [ca9\\_ecfnoticing@ca9.uscourts.gov](mailto:ca9_ecfnoticing@ca9.uscourts.gov)

**To:** [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

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**United States Court of Appeals for the Ninth Circuit**

**Notice of Docket Activity**

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**Case Number:** 15-15424

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**Docket Text:**

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**Document Description:** Mediation Letter

**Original Filename:** Mediation letter.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1106763461 [Date=03/09/2015] [FileNumber=9449234-0]  
[9d1d008bd7f39be907a0b475a97ac2d48312198b40bc3d71f8f01010441993f52a379631afb533560f618e65f1e4  
d098ab30f9de08a39bfb68a814b4c5ee4dfe]]

**Document Description:** Mediation Questionnaire

**Original Filename:** Mediation Questionnaire\_Flat.pdf

**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1106763461 [Date=03/09/2015] [FileNumber=9449234-1]  
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cda7060a1f99ec59e3a32696b9651fd10860]]

**Document Description:** Case Opening Packet

**Original Filename:** case opening - csl appls1.15.pdf

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[STAMP acecfStamp\_ID=1106763461 [Date=03/09/2015] [FileNumber=9449234-2]  
[08c795cc474ad36ee79b1806e123b0595a0222bb38f25472567c3b355ee26c4a6878309dd79bd6ecba031d2889d  
388d0461c4ae840768322b098dfbf85967e21]]

**Document Description:** Docketing Letter

**Original Filename:** /opt/ACECF/live/forms/StephanieLee2\_1515424\_9449234\_v2Letter-  
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**Electronic Document Stamp:**

[STAMP acecfStamp\_ID=1106763461 [Date=03/09/2015] [FileNumber=9449234-3]  
[622dafecf06cdfcb0df63d93c662a96bea23520b270e39c4e4f66b542c5adb1c805354e5791304ff17db4525b4845  
f5eafb57c30ba168f5544f23a8733906b23]]

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- Mr. James Michael Showalter, Attorney
- Mr. Christopher Sproul
- USDC, San Francisco

- Mr. Rocky Unruh
- Mr. William Verick, Attorney
- Ms. Kathy Pope Wyatt, Court Reporter
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E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

**Lewis, Jen**

---

**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Sunday, March 08, 2015 3:00 AM  
**To:** Lewis, Jen; Oif, Leslie; Godwin, Mary  
**Subject:** Fwd: Fwd: Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Notice of Appeal  
**Attachments:** exh 1\_notice of appeal.pdf; notice of appeal\_filed.pdf

We got the notice of appeal filed. I will let you know as soon as we get a scheduling order from the Ninth Circuit.

--Chris

----- Forwarded Message -----

**Subject:** Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Notice of Appeal  
**Date:** Sat, 7 Mar 2015 09:43:53 -0800  
**From:** [ECF-CAND@cand.uscourts.gov](mailto:ECF-CAND@cand.uscourts.gov)  
**To:** [efiling@cand.uscourts.gov](mailto:efiling@cand.uscourts.gov)

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**U.S. District Court**

**California Northern District**

### **Notice of Electronic Filing**

The following transaction was entered by Sproul, Christopher on 3/7/2015 at 9:43 AM PST and filed on 3/7/2015

**Case Name:** Ecological Rights Foundation v. Pacific Gas and Electric Company  
**Case Number:** 3:10-cv-00121-RS  
**Filer:** Ecological Rights Foundation  
**WARNING: CASE CLOSED on 02/18/2015**  
**Document Number:** 236

**Docket Text:**

**NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Ecological Rights Foundation. (Appeal fee of \$505 receipt number 0971-9342489 paid.) (Attachments: # (1) Exhibit Copy of Judgment)(Sproul, Christopher) (Filed on 3/7/2015)**

**3:10-cv-00121-RS Notice has been electronically mailed to:**

Bradley S Rochlen [brochlen@schiffhardin.com](mailto:brochlen@schiffhardin.com)

Brian Orion [brian@legalforcelaw.com](mailto:brian@legalforcelaw.com)

Christopher Alan Sproul [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

Fredric Evenson [ecorights@earthlink.net](mailto:ecorights@earthlink.net)

J. Michael Showalter [mshowalt@schiffhardin.com](mailto:mshowalt@schiffhardin.com), [j.michael.showalter@gmail.com](mailto:j.michael.showalter@gmail.com)

Jodene Louise Isaacs [jisaacs@enviroadvocates.com](mailto:jisaacs@enviroadvocates.com), [jxi3@netscape.net](mailto:jxi3@netscape.net)

Rocky N. Unruh [runruh@schiffhardin.com](mailto:runruh@schiffhardin.com), [astenzel@schiffhardin.com](mailto:astenzel@schiffhardin.com), [jbalich@schiffhardin.com](mailto:jbalich@schiffhardin.com), [SF-Calendar@schiffhardin.com](mailto:SF-Calendar@schiffhardin.com)

Russell Bertram Selman [rselman@schiffhardin.com](mailto:rselman@schiffhardin.com)

William Leonard Verick [wverick@igc.org](mailto:wverick@igc.org)

**3:10-cv-00121-RS Please see Local Rule 5-5; Notice has NOT been electronically mailed to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\fakepath\notice of appeal.pdf

**Electronic document Stamp:**

[STAMP CANDStamp\_ID=977336130 [Date=3/7/2015] [FileNumber=11457572-0]  
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22489625826fe51fbac3b7ce5e13f87bbf9b8803f1e4c58ad21195df589]]

**Document description:**Exhibit Copy of Judgment

**Original filename:**C:\fakepath\judgment.pdf

**Electronic document Stamp:**

[STAMP CANDStamp\_ID=977336130 [Date=3/7/2015] [FileNumber=11457572-1]  
[a3f40d1110b1967769ed9f4f48a06a7ca2edf2157eef279a31f07261c30a87703e442  
dd87e0d29b243d82d9902419fc1ccf38a2ff1655df4fae3d3f6fddfe289]]

--

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Phone: (415) 533-3376  
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E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

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Fax: (415) 358-5695  
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**Lewis, Jen**

---

**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Friday, March 06, 2015 8:38 PM  
**To:** Oif, Leslie; Godwin, Mary  
**Cc:** Lewis, Jen  
**Subject:** Re: RCRA District Court ruling interpreting Ninth Circuit Ecological Rights Foundation decision  
**Attachments:** judgment.pdf; order granting pge sj on rcra claim.pdf

Leslie and Mary:

I think you likely have already seen this decision, I sent it to Jen Lewis a while ago. But in case you haven't seen it, here's another recent Northern District of California decision that has some analysis of the Ninth Circuit Ecological Rights Foundation decision. This case is also another Ecological Rights Foundation case against Pacific Gas & Electric Company. As you will see, Pacific Gas & Electric Company prevailed in the Court dismissed our RCRA claim. Ecological Rights Foundation will be filing an appeal of this District Court ruling to the Ninth Circuit later today or on Monday. We expect that our opening brief to the Ninth Circuit would be likely due sometime in June.

Chris

On 3/6/2015 11:28 AM, Christopher Sproul wrote:

> All,  
>  
> I note that in the June 12, 2014 memorandum issued by Susan Shinkman  
> and Rafael DeLeon you are listed as contacts at EPA regarding who at  
> EPA should be notified of court decisions interpreting Ecological  
> Rights Foundation v. Pacific Gas & Electric, 713 F.3d 502 (9th Cir.  
> 2013). In case you have not already come across this, there was a  
> recent District Court decision issued in Washington state that  
> extensively interprets this case. I have attached it for your review.  
>  
> Chris  
>

--

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San Francisco, California 94121  
Phone: (415) 533-3376  
Fax: (415) 358-5695  
E-mail: csproul@enviroadvocates.com

**Lewis, Jen**

---

**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Friday, March 06, 2015 2:29 PM  
**To:** Lewis, Jen; Oif, Leslie; Godwin, Mary  
**Subject:** RCRA District Court ruling interpreting Ninth Circuit Ecological Rights Foundation decision  
**Attachments:** Plaintiff's Notice of Supp. Authority.pdf; Plaintiff's Notice of Supp. Authority\_ex 1.pdf

All,

I note that in the June 12, 2014 memorandum issued by Susan Shinkman and Rafael DeLeon you are listed as contacts at EPA regarding who at EPA should be notified of court decisions interpreting Ecological Rights Foundation v. Pacific Gas & Electric, 713 F.3d 502 (9th Cir. 2013). In case you have not already come across this, there was a recent District Court decision issued in Washington state that extensively interprets this case. I have attached it for your review.

Chris

--

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San Francisco, California 94121  
Phone: (415) 533-3376  
Fax: (415) 358-5695  
E-mail: csproul@enviroadvocates.com

**Lewis, Jen**

---

**From:** Lewis, Jen  
**Sent:** Monday, February 02, 2015 12:19 PM  
**To:** Chris Sproul  
**Subject:** RE: Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Order on Motion for Summary Judgment

That would be great.

Jen Lewis  
U.S. EPA Office of General Counsel  
Solid Waste and Emergency Response Law Office  
(202) 564-2097

---

**From:** Chris Sproul [mailto:envirosproul@gmail.com]  
**Sent:** Friday, January 30, 2015 5:21 PM  
**To:** Lewis, Jen  
**Subject:** Fwd: Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Order on Motion for Summary Judgment

FYI, we got our ruling. Unfavorable, alas. I will call you to discuss.

Chris

----- Forwarded Message -----

**Subject:** Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Order on Motion for Summary Judgment  
**Date:** Fri, 30 Jan 2015 12:46:15 -0800  
**From:** [ECF-CAND@cand.uscourts.gov](mailto:ECF-CAND@cand.uscourts.gov)  
**To:** [efiling@cand.uscourts.gov](mailto:efiling@cand.uscourts.gov)

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**U.S. District Court**

**California Northern District**

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The following transaction was entered on 1/30/2015 at 12:46 PM PST and filed on 1/30/2015

**Case Name:** Ecological Rights Foundation v. Pacific Gas and Electric Company

**Case Number:** 3:10-cv-00121-RS

**Filer:**

**Document Number:** 233

**Docket Text:**

**ORDER RE: CROSS MOTIONS FOR SUMMARY JUDGMENT ON RCRA CLAIM by Judge Richard Seeborg. (mkIS, COURT STAFF) (Filed on 1/30/2015)**

**3:10-cv-00121-RS Notice has been electronically mailed to:**

**Bradley S Rochlen [brochlen@schiffhardin.com](mailto:brochlen@schiffhardin.com)**

**Brian Orion [brian@legalforcelaw.com](mailto:brian@legalforcelaw.com)**

**Christopher Alan Sproul [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)**

**Fredric Evenson [ecorights@earthlink.net](mailto:ecorights@earthlink.net)**

**J. Michael Showalter [mshowalt@schiffhardin.com](mailto:mshowalt@schiffhardin.com), [j.michael.showalter@gmail.com](mailto:j.michael.showalter@gmail.com)**

**Jodene Louise Isaacs [jisaacs@enviroadvocates.com](mailto:jisaacs@enviroadvocates.com), [jxi3@netscape.net](mailto:jxi3@netscape.net)**

**Rocky N. Unruh [runruh@schiffhardin.com](mailto:runruh@schiffhardin.com), [astenzel@schiffhardin.com](mailto:astenzel@schiffhardin.com), [jbalich@schiffhardin.com](mailto:jbalich@schiffhardin.com), [SF-Calendar@schiffhardin.com](mailto:SF-Calendar@schiffhardin.com)**

**Russell Bertram Selman [rselman@schiffhardin.com](mailto:rselman@schiffhardin.com)**

**William Leonard Verick [wverick@igc.org](mailto:wverick@igc.org)**

**3:10-cv-00121-RS Please see Local Rule 5-5; Notice has NOT been electronically mailed to:**

**The following document(s) are associated with this transaction:**

**Document description:Main Document**

**Original filename:C:\fakepath\10-cv-00121-RS Order re Cross Motions for SJ.pdf**

**Electronic document Stamp:**

**[STAMP CANDStamp\_ID=977336130 [Date=1/30/2015] [FileNumber=11352765-0]  
[82fe9c464a11e29204dba6e5cbfd5aa2de8fbd8aba71ff07f2092a0633810cb50914  
58940313605e9233e31b6a72f1fc33ba7c917f59723bf2022cc5494adae5]]**

**Lewis, Jen**

---

**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Thursday, August 28, 2014 3:17 PM  
**To:** Lewis, Jen  
**Subject:** Fwd: RE: Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Transcript  
**Attachments:** 8-21-2014 MSJ HEARING 140821RS\_1000121.pdf

FYI.

--

Christopher Sproul  
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San Francisco, California 94121  
Phone: (415) 533-3376  
Fax: (415) 358-5695  
E-mail: csproul@enviroadvocates.com

**Lewis, Jen**

---

**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Tuesday, August 26, 2014 8:27 PM  
**To:** Lewis, Jen  
**Cc:** fred evenson; jodene  
**Subject:** Fwd: Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Transcript

Hi Jen,

A quick note to you about how the hearing went: it started out with the judge indicating to both sides that he saw two "non-starters" in the parties' respective papers. 1, he indicated that PG&E's suggestion that the EPA June 2014 memorandum was entitled to less weight because of my personal past and present connections to EPA was a nonstarter and he did not want to hear anything further about that in the oral argument. So PG&E's FOIA request to EPA and what they tried to make of that went nowhere, fyi. 2, he indicated that to the extent our papers were suggesting that the EPA June 2014 memorandum should be read as trumping the Ninth Circuit decision in ERF I that was a nonstarter. He viewed himself as bound by the Ninth Circuit decision end of story. So when I first opened my mouth (I got to argue first), I stressed that our argument presumed the Ninth Circuit decision was binding on him and we were not suggesting otherwise-- we were only suggesting that the EPA memorandum indicated that the Ninth Circuit decision should not be extended to the very distinguishable facts of the pole storage yard case before him. He then made plain that he fully got our argument about the factual distinctions between the cases and seemed to indicate that he understood that ruling for PG&E would not be because ERF I's holding mandates that, end of story, but would only be appropriate if he thought the reasoning in ERF should be extended to the facts in our case.

He played his cards very close to his chest thereafter, so I think we all left with no clear picture of how he will rule. He had far more questions for us than for PG&E and he seemed very engaged, with lots of back-and-forth dialogue with me, during oral argument. The argument was exceedingly long in my experience for a District Court motion-- approaching 90 min. One thing was clear-- he was very well prepared, he understands the law and facts quite well, he's very engaged and he's taking his ruling very seriously. Cautiously, we take all of that is a good sign.

I would imagine cross-motions will be under submission for several months that given our past experience in his court and how complicated the motions are. We will certainly keep you posted,

You can get the transcript if you want see the below.

Chris

----- Original Message -----

**Subject:**Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Transcript

**Date:**Tue, 26 Aug 2014 08:43:23 -0700

**From:**[ECF-CAND@cant.uscourts.gov](mailto:ECF-CAND@cant.uscourts.gov)

**To:**[efiling@cant.uscourts.gov](mailto:efiling@cant.uscourts.gov)

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**California Northern District**

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**Case Name:** Ecological Rights Foundation v. Pacific Gas and Electric Company

**Case Number:** 3:10-cv-00121-RS

**Filer:**

**Document Number:** 230

**Docket Text:**

**Transcript of Proceedings held on 8/21/2014, before Judge Richard Seeborg. Court Reporter/Transcriber Lydia Zinn, Telephone number (415) 531-6587. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. (Re [229] Transcript Order ) Release of Transcript Restriction set for 11/24/2014. (Related documents(s) [229]) (Zinn, Lydia) (Filed on 8/26/2014)**

**3:10-cv-00121-RS Notice has been electronically mailed to:**

Bradley S Rochlen [brochlen@schiffhardin.com](mailto:brochlen@schiffhardin.com)

Brian Orion [brian@legalforcelaw.com](mailto:brian@legalforcelaw.com)

Christopher Alan Sproul [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

Fredric Evenson [ecorights@earthlink.net](mailto:ecorights@earthlink.net)

J. Michael Showalter [mshowalt@schiffhardin.com](mailto:mshowalt@schiffhardin.com), [j.michael.showalter@gmail.com](mailto:j.michael.showalter@gmail.com)

Jodene Louise Isaacs [jisaacs@enviroadvocates.com](mailto:jisaacs@enviroadvocates.com), [jxi3@netscape.net](mailto:jxi3@netscape.net)

Rocky N. Unruh [runruh@schiffhardin.com](mailto:runruh@schiffhardin.com), [astenzel@schiffhardin.com](mailto:astenzel@schiffhardin.com), [jbalich@schiffhardin.com](mailto:jbalich@schiffhardin.com), [SF-Calendar@schiffhardin.com](mailto:SFCalendar@schiffhardin.com)



Russell Bertram Selman [rselman@schiffhardin.com](mailto:rselman@schiffhardin.com)

William Leonard Verick [wverick@igc.org](mailto:wverick@igc.org)

**3:10-cv-00121-RS Please see Local Rule 5-5; Notice has NOT been electronically mailed to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**C:\fakepath\140821RS\_1000121.pdf

**Electronic document Stamp:**

[STAMP CANDStamp\_ID=977336130 [Date=8/26/2014] [FileNumber=10943319-0]

[4b1ada772be662e40ac8d9e71e7fed8f31b9eecf44cf3612e3bf2abb36ef47cc6d42

c99d3a896b65bac41332532e2bb0d051abeede7667b4b4dcfddf10eba63c]]

--

Christopher Sproul

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Fax: (415) 358-5695

E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

**Lewis, Jen**

---

**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Tuesday, August 19, 2014 3:20 PM  
**To:** Lewis, Jen  
**Cc:** fred evenson  
**Subject:** Re: Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Reply to Opposition/Response  
**Attachments:** simpson reply declaration.pdf

More to follow... (this is a big file)

On 8/19/2014 12:11 PM, Christopher Sproul wrote:

Jen,

Sorry for the delay, here are most of the additional materials. I will send the remainder in a separate e-mail.

I will let you know how the oral argument on our cross-motions for summary judgment on the RCRA claims goes on Thursday.

On another note, we checked the following link for EPA's FOIA response to PG&E and could not find it. Do you know whether there is another place we might get that?

<https://foiaonline.regulations.gov/foia/action/public/home>

Thanks,

Chris

On 8/1/2014 6:04 AM, Lewis, Jen wrote:

Yes please  
Jen Lewis  
U.S. EPA Office of General Counsel  
Solid Waste and Emergency Response Law Office  
(202) 564-2097

---

**From:** Christopher Sproul  
**Sent:** Thursday, July 31, 2014 7:31 PM  
**To:** Lewis, Jen  
**Cc:** fred evenson  
**Subject:** Fwd: Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Reply to Opposition/Response  
FYI! let me know if you need the exhibits.

----- Original Message -----

**Subject:** Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric  
Reply to Opposition/Response  
**Date:** Thu, 31 Jul 2014 11:39:50 -0700  
**From:** [ECF-CAND@cand.uscourts.gov](mailto:ECF-CAND@cand.uscourts.gov)

To:[efiling@cand.uscourts.gov](mailto:efiling@cand.uscourts.gov)

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California Northern District  
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and filed on 7/31/2014

**Case Name:** Ecological Rights Foundation v. Pacific Gas and Electric Company  
**Case Number:** 3:10-cv-00121-RS  
**Filer:** Pacific Gas and Electric Company  
**Document Number:** 225

**Docket Text:**

**REPLY (re [215] MOTION for Summary Judgment on Third Claim,  
[224] MOTION for Summary Judgment Reply Brief in Support of  
Motion ) filed by Pacific Gas and Electric Company. (Showalter, J.)  
(Filed on 7/31/2014)**

**3:10-cv-00121-RS Notice has been electronically mailed to:**

Bradley S Rochlen [brochlen@schiffhardin.com](mailto:brochlen@schiffhardin.com)

Brian Orion [brian@legalforcelaw.com](mailto:brian@legalforcelaw.com)

Christopher Alan Sproul [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

Fredric Evenson [ecorights@earthlink.net](mailto:ecorights@earthlink.net)

J. Michael Showalter [mshowalt@schiffhardin.com](mailto:mshowalt@schiffhardin.com),  
[j.michael.showalter@gmail.com](mailto:j.michael.showalter@gmail.com)

Jodene Louise Isaacs [jisaacs@enviroadvocates.com](mailto:jisaacs@enviroadvocates.com), [jxi3@netscape.net](mailto:jxi3@netscape.net)

Rocky N. Unruh [runruh@schiffhardin.com](mailto:runruh@schiffhardin.com), [astenzel@schiffhardin.com](mailto:astenzel@schiffhardin.com),  
[jbalich@schiffhardin.com](mailto:jbalich@schiffhardin.com), [SF-Calendar@schiffhardin.com](mailto:SF-Calendar@schiffhardin.com)

Russell Bertram Selman [rselman@schiffhardin.com](mailto:rselman@schiffhardin.com)

William Leonard Verick [wverick@igc.org](mailto:wverick@igc.org)

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**Original filename:**C:\fakepath\REPLY.pdf

**Electronic document Stamp:**

[STAMP CANDStamp\_ID=977336130 [Date=7/31/2014]

[FileNumber=10875591-0]

[8999f63adfb66157429f7b5c89064314d5992141325125bab9867d1381a8f8a7829

3

b5e741f743037586bb99d492ed4ce7a15a704dd1ba9171676291e9d52d54]]

--

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Phone: (415) 533-3376  
Fax: (415) 358-5695  
E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

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Fax: (415) 358-5695  
E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

**Lewis, Jen**

---

**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Tuesday, August 19, 2014 3:12 PM  
**To:** Lewis, Jen  
**Cc:** Mike Costa; fred evenson  
**Subject:** Re: Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Reply to Opposition/Response  
**Attachments:** Showalter declaration Exhibit 5.pdf; Showalter declaration Exhibit 4.pdf; Showalter declaration Exhibit 3.pdf; Showalter declaration Exhibit 2.pdf; Showalter declaration Exhibit 1\_EPA e-mail.pdf; showwalter reply declaration.pdf

Jen,

Sorry for the delay, here are most of the additional materials. I will send the remainder in a separate e-mail.

I will let you know how the oral argument on our cross-motions for summary judgment on the RCRA claims goes on Thursday.

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Thanks,

Chris

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Yes please  
Jen Lewis  
U.S. EPA Office of General Counsel  
Solid Waste and Emergency Response Law Office  
(202) 564-2097

---

**From:** Christopher Sproul  
**Sent:** Thursday, July 31, 2014 7:31 PM  
**To:** Lewis, Jen  
**Cc:** fred evenson  
**Subject:** Fwd: Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Reply to Opposition/Response  
FYI! let me know if you need the exhibits.

----- Original Message -----

**Subject:** Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Reply to Opposition/Response  
**Date:** Thu, 31 Jul 2014 11:39:50 -0700  
**From:** [ECF-CAND@cand.uscourts.gov](mailto:ECF-CAND@cand.uscourts.gov)  
**To:** [efiling@cand.uscourts.gov](mailto:efiling@cand.uscourts.gov)

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California Northern District

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**Case Name:** Ecological Rights Foundation v. Pacific Gas and Electric Company  
**Case Number:** 3:10-cv-00121-RS  
**Filer:** Pacific Gas and Electric Company  
**Document Number:** 225

**Docket Text:**

**REPLY (re [215] MOTION for Summary Judgment on *Third Claim*, [224] MOTION for Summary Judgment *Reply Brief in Support of Motion* ) filed by Pacific Gas and Electric Company. (Showalter, J.) (Filed on 7/31/2014)**

**3:10-cv-00121-RS Notice has been electronically mailed to:**

Bradley S Rochlen [brochlen@schiffhardin.com](mailto:brochlen@schiffhardin.com)

Brian Orion [brian@legalforcelaw.com](mailto:brian@legalforcelaw.com)

Christopher Alan Sproul [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

Fredric Evenson [ecorights@earthlink.net](mailto:ecorights@earthlink.net)

J. Michael Showalter [mshowalt@schiffhardin.com](mailto:mshowalt@schiffhardin.com), [j.michael.showalter@gmail.com](mailto:j.michael.showalter@gmail.com)

Jodene Louise Isaacs [jisaacs@enviroadvocates.com](mailto:jisaacs@enviroadvocates.com), [jxi3@netscape.net](mailto:jxi3@netscape.net)

Rocky N. Unruh [runruh@schiffhardin.com](mailto:runruh@schiffhardin.com), [astenzel@schiffhardin.com](mailto:astenzel@schiffhardin.com),  
[jbalich@schiffhardin.com](mailto:jbalich@schiffhardin.com), [SF-Calendar@schiffhardin.com](mailto:SF-Calendar@schiffhardin.com)

Russell Bertram Selman [rselman@schiffhardin.com](mailto:rselman@schiffhardin.com)

William Leonard Verick [wverick@igc.org](mailto:wverick@igc.org)

**3:10-cv-00121-RS Please see Local Rule 5-5; Notice has NOT been electronically mailed to:**  
The following document(s) are associated with this transaction:

**Document description:** Main Document

**Original filename:** C:\fakepath\REPLY.pdf

**Electronic document Stamp:**

[STAMP CANDStamp\_ID=977336130 [Date=7/31/2014] [FileNumber=10875591-0]  
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b5e741f743037586bb99d492ed4ce7a15a704dd1ba9171676291e9d52d54]]

--

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Environmental Advocates  
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Phone: (415) 533-3376  
Fax: (415) 358-5695  
E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

--

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San Francisco, California 94121  
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**Lewis, Jen**

---

**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Thursday, July 31, 2014 7:32 PM  
**To:** Lewis, Jen  
**Cc:** fred evenson  
**Subject:** Fwd: Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company Reply to Opposition/Response  
**Attachments:** pge reply brief.pdf

FYI! let me know if you need the exhibits.

----- Original Message -----

**Subject:** Activity in Case 3:10-cv-00121-RS Ecological Rights Foundation v. Pacific Gas and Electric Company  
Reply to Opposition/Response  
**Date:** Thu, 31 Jul 2014 11:39:50 -0700  
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**U.S. District Court**

**California Northern District**

### **Notice of Electronic Filing**

The following transaction was entered by Showalter, J. on 7/31/2014 at 11:39 AM and filed on 7/31/2014

**Case Name:** Ecological Rights Foundation v. Pacific Gas and Electric Company  
**Case Number:** 3:10-cv-00121-RS  
**Filer:** Pacific Gas and Electric Company  
**Document Number:** 225

### **Docket Text:**

**REPLY (re [215] MOTION for Summary Judgment on Third Claim, [224] MOTION for Summary Judgment Reply Brief in Support of Motion )** filed by Pacific Gas and Electric Company.  
(Showalter, J.) (Filed on 7/31/2014)



**3:10-cv-00121-RS Notice has been electronically mailed to:**

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b5e741f743037586bb99d492ed4ce7a15a704dd1ba9171676291e9d52d54]]

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**Lewis, Jen**

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**From:** Christopher Sproul <envirosproul@gmail.com>  
**Sent:** Saturday, July 05, 2014 2:11 PM  
**To:** Schefski, Kenneth; jisaacs@enviroadvocates.com; brianorion@gmail.com; wverick@igc.org; ecorights@earthlink.net  
**Cc:** Lewis, Jen; Saenz, Diana; Oif, Leslie; Neves, Peter; Godwin, Mary; Healy, Helena; Andrews, Mary; Kelley, Rosemarie  
**Subject:** Re: EPA Memorandum Regarding ERF v. PG&E, 713 F.3d 502  
**Attachments:** filed reply brief RCRA msj.pdf

All,

Please find attached a copy of the summary judgment motion reply brief we filed in our district court case against Pacific Gas & Electric Company on Thursday. As you will see, we discussed your memorandum extensively in the brief. We will send you copies of the additional briefing that PG&E will file at the end of the month. The hearing before the court is set for August 21. We will let you know how that hearing goes and of course send you a copy of the court's ruling.

Let us know if you would like copies of any of the declarations were exhibits that we filed along with the brief.

Chris Sproul

On 6/16/2014 3:05 PM, Schefski, Kenneth wrote:

Dear Counsel for Ecological Rights Foundation and Pacific Gas and Electric Company,  
For your information, I have attached a memorandum issued June 12, 2014, from the Environmental Protection Agency's (EPA) Director of the Office of Civil Enforcement and Acting Director of the Office of Site Remediation Enforcement, noting concerns with the Ninth Circuit Court of Appeal's analysis in Ecological Rights Foundation v. Pacific Gas and Electric Co., 713 F.3d 502 (9<sup>th</sup> Cir. 2013). This document was prepared in consultation with EPA's Office of General Counsel and Office of Solid Waste and Emergency Response. The addressees are EPA management officials in the agency's regional offices, but the document is not privileged or confidential; therefore, given your involvement in the litigation that is the subject of the memorandum, as well as ongoing litigation over related matters, I wanted to share the document with counsel for both parties.  
If you have any questions, please feel free to contact me.  
Sincerely,  
K.C. Schefski, Associate Director  
Waste and Chemical Enforcement Division  
U.S. Environmental Protection Agency, Office of Civil Enforcement  
Tel: 202-564-8213

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